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UNITED STATES BANKRUPTCY COURT
Northern District of California

FILED

JUN 26 2015

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

In re:

Idum W. Wiser

Debtor
and

Kennita L. Watson

Movant / Landlord / Creditor

BK Case No. 15-30628 (Chapter 7)

RS No:

Hearing Date: Thurs, July 2nd, 2015 (*PROPOSED*)

Hearing Time: 1pm (*PROPOSED*)

HONORABLE HANNAH L. BLUMENSTIEL

EMERGENCY MOTION REQUIRING EXPEDITED DETERMINATION FOR ORDER
REQUESTING ENFORCEMENT OF SHERIFF'S WRIT OF POSSESSION
AND FOR RELIEF FROM STAY

Under Rule 4001 & 11 U.S.C.A. § 362(a) & 365(d)(3)
(Adapted from 6A West's Fed. Forms, Bankruptcy Courts § 9:178 (4th ed.))

To the Honorable Hannah L. Blumenstiel, Bankruptcy Judge:

Kennita Lane Watson ("Movant"), a named Creditor, and a presumed Landlord of the Debtor Idun William Wiser ("Debtor"), and sole, uncontested title holder of 835 San Pier Court, Sunnyvale, CA, respectfully declares the following as true, and moves this court for an emergency order:

- a) requiring the Debtor's Chapter 7 trustee ("Trustee") to immediately relinquish any and all Debtor's presumed tenant rights, and to perform the obligations of the Debtor to the Movant under the Santa Clara County Sheriff's Writ of Possession of Real Property, included and described herein, and
- b) granting the Movant/Landlord/Creditor Watson relief from stay to retake possession of such property and otherwise enforce its rights under certain orders of the Santa Clara County District Court and Sheriff's Office [Unlawful Detainer Case 115-CV-276975], (Exhibit 1-C) or

1 c) should the court decline to grant relief from stay, setting a shortened deadline by which the
2 Trustee must either assume or reject said possession.

3 d) Additionally, Movant/Creditor *begs* the court to grant this decision, or a hearing to make said
4 decision, on an emergency/ex-parte basis, given the extreme and exigent circumstances of
5 Movant, who is:

6 A: Severely disabled (with Secondary Progressive Multiple Sclerosis),

7 B: Living in a motel at great personal expense (and health risk, without handicap
8 accommodations), while waiting to return to her home, at an entirely unpredictable future
9 date,

10 C: After being fiscally devastated by the "financial caregiving" of Debtor (and his mother,
11 Sheahan), she is facing further financial ruin by the legal fees and other costs associated with
12 no fewer than seven civil actions involving the Debtor and/or his mother:

13 San Mateo County Sup: CIV532269 & CLJ211042;

14 Santa Clara County Sup: 115-CV-276975, 1-15-CH-006097, & 1-15-CH-006098, and

15 Federal Bankruptcies: 15-50651-AS (Sheahan) & 15-30628 (Wiser).

16 D: Continued possession by the Debtor will cause substantial harm to the Movant, in that, the
17 Debtor remains in possession of the premises without payment of monthly rent to the
18 Movant, thereby denying the moving party adequate protection of her interest in the subject
19 property, under the provisions of 11 U.S.C. Section 362(d)(1).

20 E: Movant has been and continues to be personally financially devastated by the Debtor's
21 mismanagement, undue influence, embezzlement, conversion, financial abuse, and
22 malfeasant violations of fiduciary and personal trust.

23 In support of its motion, the Landlord/Movant represents/declares as follows:

24 1. Debtor Wiser has never had (nor produced) any written lease or colorable tenant rights in the
25 residential real property in question located at 835 San Pier Court, Sunnyvale, CA
26 (hereinafter, "San Pier"). Additionally, the property is not necessary to an effective
27 reorganization of the Debtor.

28 2. Movant Watson has not known Debtor Wiser to have any form of gainful employment in the
last 20 years. Furthermore, Debtor admitted at June 16th 2015 Meeting of Creditors that he
has filed NO state or federal taxes for at least 20 years. Given these admission, and the fact

1 that Debtor has NEVER paid any rent, it is clear that there is NO likelihood that debtor can
2 provide any assurance whatsoever that he will pay any rent now or ever. Per RE: Hawaii
3 Pacific Package Store, Inc. (1980, BC DC Hawaii) 4 BR 502, and RE: Richards Pontiac, Inc.,
4 (1980) 6 BR 773) without assurance of adequate protection, the creditor will be granted relief
5 where the Debtor offers no periodic payments, and offers no testimony to assure adequate
6 protection.

- 7 3. Debtor Wiser does not appear to currently reside or otherwise make use of San Pier.
8 Additionally, it appears completely abandoned and uninhabited at this time.
- 9 4. The San Pier premises appear to be abandoned, and not in any way occupied by the Debtor.
10 Furthermore, San Pier has not been the residence of the Debtor for at least the last five
11 months. Debtor, when queried by bankruptcy trustee Wirum, indicated another address (Fair
12 Oaks) as his residence. Debtor does not receive mail at the San Pier. Debtor's mail now
13 apparently goes to a PO Box in Menlo Park, per his Bankruptcy filings.
- 14 5. According to the US Post Office, as of 3/27/15, Debtor (Idun William Wiser, AKA, Samuel
15 Brooks) "Moved and left no forwarding address". This information was provided by the
16 USPO per a formal pro-se legal request of Movant under section 265.6(d), 39 CFR 265, and
17 CCP Section 116.340 document, titled "Request for change of address or boxholder
18 information needed for service of legal process". This USPO legal FOI request was made
19 after three months of failed restraining order service attempts had been made by the Sheriff's
20 office, Movant's agents, and private service agents at San Pier. (See Exhibit 1-P).
- 21 6. Other testimony supporting Debtor's lack of tenancy: According to court testimony on
22 multiple occasions by Debtor's mother, Mary-Lou Sheahan, (hereinafter "Sheahan"), there
23 are no other tenants or residents whatsoever at San Pier besides herself. Sheahan is also
24 Debtor Wiser's Power of Attorney Agent, (according to verbal testimony of the Debtor to the
25 Trustee at the 6/16/15 Meeting of the Creditors). The following are excerpts from Sheahan's
26 first, permanent Elder Abuse Restraining Order Hearing, 1-15-CH-006098, (Sheahan is being
27 restrained from Movant Watson) (Full Court Transcript attached as Exhibit 1-E):

28 02-11-15, Watson V. Sheahan, Elder Abuse Restraining Order Hearing, 1-15-CH-006098

(Page 8, lines 25-28, page 9, lines 1- 17, and page 10, lines 9-14)

THE COURT: (Judge Thomas E. Kuhnle, Santa Clara Sup Court, Probate, Speaking):

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25-26 THE COURT: Okay. So what I'm hearing is that you live at 735 (sic)
(835) San Pier court, is that right?
27 MS. SHEAHAN: Yes. Not Ms. Watson.
28 THE COURT: And who owns that house?

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1-2 MS. SHEAHAN: To my understanding it is Kennita Watson.
3 THE COURT: And do you?
4 MS. SHEAHAN: It's in foreclosure.
<5-13 omitted>

14-15 THE COURT: Who else is currently living at that house?
16-17 MS. SHEAHAN: I'm the only person currently living at that house.
<omitted>

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9-13 THE COURT: Let me just get an understanding. So you're living on San
Pier. You're the only person living there. And you agree Ms. Watson
owns the property. And then the next step is you think you have a lease?
14 MS. SHEAHAN: I know I have a lease.

7. The Landlord/Creditor/Owner of San Pier is a disabled, dependent adult, who at best could only nominally be considered a "landlord" of the Debtor. Approximately a decade ago the Movant had a personal relationship with the Debtor (boyfriend). Debtor held himself out publically to be a caregiver of the Debtor while converting her assets to himself. The Debtor further held himself out to be an "Authorized Agent" of the Movant in publicly recorded documents, presumably under a Power of Attorney contract – although no POA contract has ever been produced by the Debtor. Tenant rights were assumed by the Debtor by an illegal squatting or subtenancy under Debtor's mother, Sheahan, who claimed tenancy (under a purported lease that she could not and did not produce, despite requests by the Probate court.)
8. Note that around the year 2009-2010, Debtor and his mother ("Sheahan"), forced Movant out of her own single family home and into an apartment, using the premise of home repair hazards to the disabled Movant/owner as the reason. Movant was never allowed to return to her home, was forced to live with three male personal friends of Debtor (none paying any rent), and was forced to pay approximately \$30K total rent in those years. This despite Movant legally owning three homes, all managed by Debtor's mother, Sheahan, with Powers of Attorney. (One home was lost to foreclosure, unbeknownst to Movant, one was sold, and one is underwater after 6 years of being in nonstop foreclosure.)
9. Addition, in those years 2008-2015 of Debtor and Debtor's mother (Sheahan) management of Watson's affairs, Movant accrued mortgage interest, escrow arrears, and financial penalties

1 and fees totaling \$242,137.23 against her, (Exhibit 1-X) strictly from her San Pier mortgage
2 holder, currently outstanding and presently being paid back. An additional amount of
3 approximately \$150K of other debt was obtained in Movant Watson's name and SS number,
4 and has gone missing, with no measurable expenditures by, or benefits to, Movant Watson.

5 10. Prior to the commencement of the within proceedings on May 14, 2015 ("Petition Date"), the
6 Debtor's mother Sheahan was in default in her obligations to the Movant under the lease,
7 having failed to pay any rent whatsoever between the years of 2008-2015. The Debtor's
8 unpaid fair market rent prepetition obligation (assuming \$1K/year times five years of
9 occupancy) to the Movant is at least \$60,000. This does not include apparent extensive
10 physical damage to the home caused by the Debtor and/or his illegal cotenants.

11 11. Prior to the Petition Date, the Movant successfully initiated an action in the Santa Clara
12 District Court: Unlawful Detainer Case 115-CV-276975, ("Action"), seeking to recover
13 possession of the Premises. The Debtor failed to respond to the Action. The Debtor being in
14 default, the Santa Clara District Court on 5/25/15 issued a Writ of Possession ordering that the
15 Movant should have possession of the Premises. A true and valid copy of the Writ of
16 Possession is attached hereto as Exhibit 1-W.

17 12. No lease exists or was ever executed. Debtor was at best an illegal subtenant or squatter.
18 Thus, his tenancy rights do not have substantial market value to the Trustee.

19 13. The Debtor has no equity in the San Pier premises or in any unwritten leases therein. Section
20 362(d) of the Bankruptcy Code requires the court to grant relief from the stay imposed by §
21 362(a) of said Code where (a) the Debtor has no equity in the property against which a party
22 seeks to act and (b) such property is not necessary to an effective reorganization. Debtor has
23 made neither claim, and it is asserted with great confidence by the Movant that neither
24 circumstance could possibly apply in this case.

25 14. The Debtor has not filed bankruptcy in good faith under §362(c)(3) & (4). This bankruptcy
26 filing is a sham filing by Debtor, designed to allow the continued conversion of Movant's
27 assets and finances by Debtor. Debtor's filing in effect serves as the second serial filing by
28 Debtor's mother and POA agent, Mary-Lou Sheahan, filed less than six months ago, in order
to strategically delay multiple Unlawful Detainer and other inconvenient civil court deadlines
faced by Debtor (and his mother, who can and should be considered the same as Debtor).

1 15. Furthermore, there has not been a substantial change in the financial or personal affairs of the
2 Debtor, and the Debtor refuses to timely file required petition or schedules.

3 16. The Trustee's inability to rescind the Debtor's presumed tenancy rights, due to Debtor's delay
4 tactics, poses an extraordinary hardship to the Movant, who must meet her own obligations
5 with respect to the financing of the building in which the Premises are located. Furthermore,
6 the Movant, though severely physically handicapped by MS and requiring special disability
7 accommodations, has had to personally endure no fewer than five moves in the last six
8 months, and currently is living full time in a hotel at substantial daily expense, awaiting the
9 right to return to her home. This hardship requires the expedited determination of this matter.

10 17. Movant, since 1/21/15, has had a Elder Abuse restraining order pending against the Debtor (1-
11 15-CH-006097), and on June 3rd, 2015, had a permanent Elder Abuse restraining order
12 awarded against Debtor's mother, Sheahan (1-15-CH-006098). This order will ultimately
13 deny Debtor any tenancy or use rights of the Premises, further diminishing its value to the
14 Trustee.

15 18. Furthermore, attached as Exhibit 1-R is a true and valid copy of a currently pending ex-parte
16 motion by Movant's Elder Abuse attorney, Patrick Nakao, case No. 1-15-CH-006097:
17 PETITION FOR CONTESTED EX PARTE HEARING ON ORDER TO TRANSFER
18 POSSESSION OF FIREARMS, scheduled for Monday, June 29th, 2015.

19 In said Exhibit 1-R, attorney Nakao describes how Debtor misled the Movant, and Santa Clara
20 Probate Judge Kuhnle into believing that he was going to immediately relinquish control of
21 San Pier, and simultaneously relinquish control of firearms (as was required by law by his
22 standing Temporary Restraining Order) by leaving them behind at San Pier for Movant to
23 reclaim.

24 However, Debtor Wiser apparently masterfully used his bankruptcy filing to retain his tenancy
25 at San Pier, by filing it on the exact day as his San Pier Unlawful Detainer judgment, and thus,
26 using the bankruptcy court to Stay his eviction, he retain his illegal possession of firearms.

27 Note that in this Exhibit (1-R) there is a declaration describing how Debtor Wiser, when
28 directly asked at his June 16th, 2015 Meeting of Creditors, whether he had or was giving up
his tenancy rights to San Pier, he clearly indicated that he was not relinquishing his tenancy,
answering: "I am still deciding that matter".

1 Retaining his personal cache of firearms puts enormous fear and strain on both the Movant, as
2 well as the seven abuse witnesses who filed sworn affidavits in support of Movant Watson's
3 Elder Abuse R.O. hearing and will be appearing as witnesses in the upcoming R.O. trial.

4 19. The Movant herein begs an emergency order of this court granting the Movant relief from stay
5 to pursue her rights as granted, including her right to immediate recovery of the Premises.

6 20. Movant asks the court to consider a financial judgment against Debtor in the form of fair
7 market value back rent (since 2009), repair costs for illegal, unpermitted, unauthorized
8 construction on the premises by the Debtor, and all legal cost incurred to regain possession.

9 21. Movant also moves in the alternative that, if the court declines to grant relief from stay, the
10 court shorten to seven days the time within which the Trustee must assume or reject Debtor's
11 tenancy rights and if assumed, immediately assume current and back fair market rent
12 payments (as determined by the Trustee).

13 22. Movant asks the court to rely on Exhibits 1A & 1B for the Memorandum of Points and
14 Authorities in Support of her Motion. These Exhibits are both Relief From Automatic Stay
15 motions, filed against Sheahan (and "cocreditor" Wiser) in Sheahan bankruptcy 15-50651-AS.

16 Exhibit 1A is the pending Relief Motion by Landlord/Creditor Azad against Sheahan (re: Fair
17 Oaks), by firm Terra Law. It chronicles both Sheahan's and Wiser's criminal abuse of the
18 Bankruptcy court to further their financial exploitation of others.

19 Exhibit 1B is Movant Watson's Successful Relief Motion dated April 15, 2015 against
20 Sheahan (for San Pier).

21 23. Movant particularly and respectfully begs the court to carefully consider the motion and
22 Points & Authorities of Exhibit 1A, as the facts and legal circumstances are largely identical,
23 and Movant is drafting this Motion pro se and under extreme financial and time duress:
24

25 Dated: June 26th, 2015

26 Kennita Lane Watson
27 Movant, Landlord & Creditor, In Pro Se
28

Respectfully submitted,

Signed: 

EXHIBIT 1-A

Sheahan Bankruptcy Case 15-50651-ASW

(Unlawful Detainer Case CLJ211042)

**Azad V Sheahan/Wiser Relief From Automatic
Stay Filings**

Attorney McDaniel

UNITED STATES BANKRUPTCY COURT
Northern District of California

In re:) Bankruptcy No.: 15-50651 ASW
Mary Lou Sheahan,) R.S. No.:
) Hearing Date: July 1, 2015
) Time: 2:30 p.m.
Debtor)
_____)

Relief From Stay Cover Sheet

Instructions: Complete caption and Section A for all motions. Complete Section B for mobile homes, motor vehicles, and personal property. Complete Section C for real property. Utilize Section C as necessary. If moving party is not a secured creditor, briefly summarize the nature of the motion in Section D.

- (A) Date Petition Filed: February 27, 2015 Chapter: 13
Prior hearings on this obligation: N/A Last Day to File §523/§727 Complaints:
- (B) Description of personal property collateral (e.g. 1983 Ford Taurus): N/A
- (C) Description of real property collateral (e.g. Single family residence, Oakland, CA): N/A
- (D) Other pertinent information: The purpose of this Motion for Relief from Automatic Stay is to allow an unlawful detainer case to proceed against the debtor in unlawful detainer in the Superior Court of California, County of San Mateo, case no. CLJ211042. A notice of automatic stay was filed in the unlawful detainer action on May 6, 2015.

The debtor has admitted in this bankruptcy proceeding that she does not reside at the residential property owned by Mahmood Azad and commonly known as 4021 Fair Oaks Avenue, Menlo Park, California, 94025. She has not paid any rent on the property since Mr. Azad purchased the property in January 2015, but has nonetheless filed a notice of automatic stay in the unlawful detainer.

Creditor Mahmood Azad seeks a determination that the automatic stay does not apply to the unlawful detainer action because debtor has no legal or equitable interest in the property. In the alternative, Mr. Azad seeks retroactive "in rem" relief from the stay or an order for adequate protection.

Dated: June 15, 2015

/s/ James A. McDaniel

Signature

James A. McDaniel

Print or Type Name

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8 Attorneys for Creditor Mahmood Azad

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 In re
13 MARY LOU SHEAHAN,
14 Debtor.

Case No. 15-50651-ASW

Chapter 13

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR RELIEF FROM AUTOMATIC STAY**

Date: July 1, 2015

Time: 2:30 p.m.

Place: 280 South First Street, Courtroom 3020
San Jose, CA 95113

Judge: Hon. Arthur S. Weissbrodt

4828-3828-4324, v. 1

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TABLE OF AUTHORITIES

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<i>Alakozai v. Citizens Equity First Credit Union (In re Alakozai)</i> 499 B.R. 698 (9th Cir. B.A.P. 2013).....	7
<i>Fadel v. DCB United LLC (In re Fadel)</i> 492 B.R. 1 (9th Cir. B.A.P. 2013).....	5
<i>Fjeldsted v. Lien (In re Fjeldsted),</i> 293 B.R. 12 (B.A.P. 9th Cir. 2003).....	11, 12, 13
<i>In re Elmore,</i> 94 B.R. 670 (C.D. Cal. 1988)	10
<i>In re Haw. Pac. Package Store, Inc.,</i> 4 B.R. 502 (Bankr. D. Haw. 1980)	9
<i>In re Richards Pontiac, Inc.,</i> 6 B.R. 773 (Bankr. E.D.N.Y. 1980).....	8
<i>In re Universal Life Church,</i> 127 B.R. 453 (E.D. Cal. 1991).....	10
<i>Knowles v. Robinson,</i> 60 Cal.2d 620 (1963)	10
<i>Mataya v. Kissinger (In re Kissinger),</i> 72 F.3d 107	12
<i>Schwartz v. United States (In re Schwartz),</i> 954 F.2d 569 (9th Cir. 1992)	11

Statutes

11 U.S.C. §361	8
11 U.S.C. §362.....	5, 6, 7, 8, 10, 11
11 U.S.C. §541(a)(1).....	5

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Treatises

March, Ahart, & Sharpiro, Cal. Prac. Guide: Bankruptcy (The Rutter Group 2014) ¶6:41	5
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Creditor Mahmood Azad, respectfully submits the following memorandum of points and authorities in support of his Motion for Relief From Automatic Stay ("Motion").

I. INTRODUCTION

Debtor has no legal, equitable, or possessory interest in the real property located at and commonly known as 4021 Fair Oaks Avenue, Menlo Park, California, 94025 (the "Property"). Notwithstanding this fact, she has filed a notice of automatic stay in an unlawful detainer action pending in state court and improperly frustrated Mr. Azad's ability to regain possession of the Property.

Apparently, debtor also used her son, I. William Wiser ("Wiser"), to engage in a scheme to delay or hinder the unlawful detainer by submitting multiple bankruptcy filings affecting the Property. (See, United States Bankruptcy Court, Northern District of California case no. 15-30628.) In two bankruptcies, the debtor and Wiser have each claimed to be the lessee with a 10-year lease for the Property and identifying the other as the lessor. Neither debtor nor Wiser have a valid lease for the Property.

Debtor does not have an ownership interest in the Property and she has admitted in an earlier proceeding in this bankruptcy that she does not reside at the Property. There is no basis to stay the Unlawful Detainer currently pending. Mr. Azad seeks relief from the automatic stay to regain possession of his Property which has been occupied by debtor's co-conspirators or others residing at the Property under purported right proved by debtor or Wiser, all without any payment of rent since January of this year.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Property

Prior to December 22, 2015, Kennita Watson owned the Property in fee simple.

[Declaration of Mahmood Azad in Support of Motion for Relief From Automatic Stay ("Azad Decl."), ¶ 2.]

On or about December 22, 2015, Ms. Watson sold the Property and transferred it by grant deed to Mr. Azad. [Azad Decl., ¶ 3.] The grant deed was recorded in the official records of the County of San Mateo Office of the Clerk Recorder, document no. 2015-001417. [Azad Decl., ¶

1 3.] At the time, Mr. Azad was told that there was a person or persons occupying the property
2 illegally who would have to be evicted. [Azad Decl., ¶ 2.] The fact that Mr. Azad would bear the
3 burden of evicting the residents of the Property was part of the consideration for the sale of the
4 Property. [Azad Decl., ¶ 2.]

5 Mr. Azad visited the Property and it appeared to be occupied but it was unclear to him who
6 actually resided there. [Azad Decl., ¶ 4.] At the Property, Mr. Azad met debtor. She refused to
7 grant him access to the interior. [Azad Decl., ¶ 4.] Debtor has not provided Mr. Azad with
8 evidence of her interest in the Property or provided the Court or Trustee with information
9 sufficient to claim an interest protected by the automatic stay. [Azad Decl., ¶ 4.]

10 On or about January 24, 2015, Mr. Azad advised debtor that rent for the Property, a single
11 family residence in Menlo Park, was \$6,000 per month. [Azad Decl., ¶ 5.] Debtor indicated to
12 Mr. Azad that she had no intention of ever paying that amount. [Azad Decl., ¶ 5.]

13 Thereafter, Mr. Azad made multiple attempts to visit and investigate the interior of the
14 Property. [Azad Decl., ¶ 5.] Eventually, Mr. Azad was granted access to the Property and
15 discovered that it had been converted into what can only be described as a tenement house. [Azad
16 Decl., ¶ 5.] Every room in the house, including living spaces and the garage, had been "rented" to
17 one or more people. [Azad Decl., ¶ 5.] Mr. Azad believes that debtor is collecting approximately
18 \$600-\$700 per month from each of the 8-10 persons currently residing at the Property. [Azad
19 Decl., ¶ 5.] Due to the fact that debtor is not paying rent to illegally occupy the Property, Mr.
20 Azad estimates that she is converting \$6,000-\$7,000 per month. [Azad Decl., ¶ 5.]

21 **B. The Unlawful Detainer and Debtor's Bankruptcy**

22 On or about February 27, 2015, debtor filed her Voluntary Petition under Chapter 13 of
23 the Bankruptcy Code. [Declaration of James McDaniel in Support of Motion for Relief From
24 the Automatic Stay ("McDaniel Decl."), ¶ 2; see, Azad Decl., ¶ 6.] Debtor's filing was skeletal,
25 contained no substantive schedules, and did not list Mr. Azad as a creditor. [McDaniel Decl., ¶
26 2.] The filing did not list the Property as an asset of the estate. [McDaniel Decl., ¶ 2.]

27 Before filing any schedules, debtor proposed two Chapter 13 plans. On or about March
28 12, 2015, debtor filed her first proposed Chapter 13 plan. [McDaniel Decl. ¶ 3.] On or about

1 March 19, 2015, debtor sought a motion to extend time to file her schedules. [McDaniel Decl.
2 ¶ 3.] The motion was granted on or about March 20, 2015. [McDaniel Decl. ¶ 3.] Then, on or
3 about March 24, 2015, debtor filed an amended proposed Chapter 13 plan. [McDaniel Decl. ¶
4 3.] Neither plan identified any lease that would be retained or that any lease would be rejected.
5 [McDaniel Decl. ¶ 3.]

6 On or about March 30, 2015, Ms. Watson filed a motion for order terminating stay to
7 pursue an unlawful detainer pending against the debtor in the Superior Court of California,
8 County of San Mateo, case no. 115CV276975, concerning a different parcel of real property.
9 [McDaniel Decl. ¶ 4.] On or about April 10, 2015, debtor filed her Response to Motion for
10 Relief from Stay in which she represented that the "lease on [her] housing (835 San Pier Court)
11 runs through March 31, 2017." [McDaniel Decl. ¶ 4, Exh. E ¶ 8.] Debtor also represented, in
12 no uncertain terms, that:

13 Movant's attorney for this MFRS states clearly in his Notice for MFRS
14 that the subject property is commercial real property. Debtor wants the
15 record kept straight that at no time has this ever been commercial real
16 estate property and that at all times this has been residential real estate
property. [McDaniel Decl. ¶ 4, Exh. E ¶ 15.]

17 The hearing was held on or about April 15, 2015. [McDaniel Decl., ¶ 5.] On or about
18 April 16, 2015, full relief from the stay was granted including waiver of the 14 day stay.
19 [McDaniel Decl., ¶ 5, Exhibit F.]

20 Mr. Azad had not received any rent payments from debtor, or any other person, by mid-
21 April 2015. [Azad Decl., ¶ 6.] On or about April 22, 2015, Mr. Azad filed a complaint for
22 unlawful detainer in the Superior Court of California, County of San Mateo, case no.
23 CLJ211042 (the "Unlawful Detainer"), to eject debtor all of the unidentified residents of the
24 Property. [Azad Decl., ¶ 6.] The Unlawful Detainer only sought possession of the Property and
25 did not seek damages against debtor or any other person. Mr. Azad did not believe the Property
26 was subject to debtor's bankruptcy. [Azad Decl., ¶ 6.] Specifically, he was not listed as a
27 creditor, he was not served with notice, and the Property was not listed as debtor's residence or
28 as an asset of the estate. [Azad Decl., ¶ 6.]

1 On or about May 6, 2015, debtor filed a notice of stay of proceedings in the Unlawful
2 Detainer. [Azad Decl., ¶ 7.] This was immediately before Mr. Azad was set to take debtor's
3 default. Thereafter, Mr. Azad ceased all action in the Unlawful Detainer. [Azad Decl., ¶ 7.]

4 On or about May 6, 2015, debtor filed her Schedule I and Schedule J. [McDaniel Decl.,
5 ¶ 6.] Debtor's Schedule I lists her monthly income as \$1,315.00. [McDaniel Decl., ¶ 6.]
6 Debtor lists her monthly expenses as \$1,254.00, including a \$401.00 rent payment. [McDaniel
7 Decl., ¶ 6.]

8 One month after the order granting relief from stay to Ms. Watson, on or about May 14,
9 2015. I. William Wiser ("Wiser"), filed his Voluntary Petition under Chapter 7 of the
10 Bankruptcy Code, case no. 15-30628. [McDaniel Decl., ¶ 7.] Mr. Azad is informed and
11 believes that Wiser is debtor's son. [Azad Decl., ¶ 4.] He lists the Property as his residence.
12 Wiser has not filed schedules. [McDaniel Decl., ¶ 7.] He has, however, filed an Individual
13 Debtor's Statement of Intention in which, under Part B for personal property subject to
14 unexpired leases, he lists: "10 Year Administrative Lease On Menlo Park Home for Veterans
15 Home." [McDaniel Decl., ¶ 7.] The lessor is identified as debtor, Mary Lou Sheahan.
16 [McDaniel Decl., ¶ 7.]

17 On or about May 28, 2015, debtor filed additional schedules including Schedule A and
18 Schedule G. [McDaniel Decl., ¶ 8.] Debtor did not list any ownership interest in real property
19 in her Schedule A. [McDaniel Decl., ¶ 8.] In her Schedule G, debtor listed two items: 1) an
20 "Administrative Lease for the administration of Vetrans [sic] Home Located [sic] in Menlo
21 Park," identifying I. William Wiser as the other party to the lease and 2) "835 San Pier Ct
22 Sunnyvale, CA 94085 Lease on Rented Property good through March 31, 2017," identifying
23 K.L Watson as the other party to the lease. [McDaniel Decl., ¶ 8.] Debtor did not list in her
24 Schedule G any lease arrangement with Ms. Watson or Mr. Azad for the Property. [McDaniel
25 Decl., ¶ 8.]

26 On or about May 29, 2015, Wiser filed what appears to be a motion for order extending
27 time to file schedules, statements, and other necessary documents in his bankruptcy.
28 [McDaniel Decl., ¶ 9.] While his motion and accompanying documents are not clear, it appears

property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

...

(B) multiple bankruptcy filings affecting such real property.

This provision of the Bankruptcy Code addresses the issue of debtors resorting to filing "tactical, serial bankruptcy cases" to frustrate creditors. *Alakozai v. Citizens Equity First Credit Union (In re Alakozai)*, 499 B.R. 698, 702 (9th Cir. B.A.P. 2013). Under 11 U.S.C. § 362(d)(4), the bankruptcy court may grant "in rem" relief from the automatic stay to the creditor to address such schemes. *Id.* The successive filings do not all need to be made by the same creditor. *Id.* at 702. In *In re Alakozai*, the order under 11 U.S.C. § 362(d)(4) was entered in the husband's bankruptcy and had full effect to remove an unlawful detainer from the automatic stay initiated by the wife's later bankruptcy. *Id.* at 705.

Debtor and Wiser have filed successive bankruptcies, each inconsistently claiming in their schedules to be the lessee of a 10-year lease to which no current or prior owner of the Property is a party. Debtor claimed in her Schedule G that she is the lessee under a 10-year lease to which Wiser is the only other identified party. Wiser identifies what appears to be the same 10-year lease, only Mary Lou Sheahan is listed as the Lessor.

Neither debtor nor Wiser have claimed an ownership interest in the Property nor can they establish such an interest at any time. Debtor filed her Schedule A and listed no real property. Wiser has not yet filed his Schedule A, but he claims only to be the lessee under a 10 year lease. In any event, Mr. Azad took title in fee from Ms. Watson who was, at the time, the sole record title holder to the Property. [Azad Decl., ¶ 2.]

Debtor and Wiser, who have a familial relationship, appear to be playing a "shell game." Each is claiming a long lease without claiming ownership of the Property and each claiming that the other is the party who agreed to the lease, purportedly with the authority to do so. They are engaging in this game to the great detriment of creditors and innocent purchasers for value while greatly disrespecting this Court and the purpose underlying bankruptcy protection, i.e., to give honest debtors a fresh start.

1 In rem relief is appropriate here because debtor and a member of her family have filed
2 multiple bankruptcies with the apparent sole purpose to avoid valid evictions from properties
3 owned or formerly owned by Ms. Watson. Debtor and Wisner have no ownership interest in the
4 property and have concealed that fact in their filings with the Bankruptcy Court by claiming to
5 be lessees under leases with each other. Moreover, Mr. Azad is aware of as many as eight other
6 individuals who reside at the Property and who could potentially file bankruptcy to further
7 frustrate the Unlawful Detainer.

8 Mr. Azad respectfully requests that the motion for relief from the automatic stay be
9 granted pursuant to 11 U.S.C. § 362(d)(4) on the grounds that the petition is part of a scheme to
10 delay, hinder, or defraud creditors that involved multiple bankruptcies affecting his Property.
11 Due to the summary nature of the unlawful detainer proceeding Mr. Azad also respectfully
12 requests that the court waive the 14-day waiting period provided in Fed. R. Bankr. P.
13 4001(a)(3).

14 **C. Relief From the Automatic Stay Should be Granted Due to the Lack of**
15 **Adequate Protection of Azad's Interest in the Property**

16 11 U.S.C. § 362 provides:

17 (d) On request of a party in interest and after notice and a hearing, the
18 court shall grant relief from the stay provided under subsection (a) of this
19 section, such as by terminating, annulling, modifying, or conditioning
20 such stay--

21 (1) for cause, including the lack of adequate protection of an
22 interest in property of such party in interest;

23 The language of Section 362(d) is mandatory and "requires the court to grant relief from
24 stay unless the plaintiffs are adequately protected." *In re Richards Pontiac, Inc.*, 6 B.R. 773,
25 777 (Bankr. E.D.N.Y. 1980). Adequate protection is defined, albeit not exclusively, in 11
26 U.S.C. § 361 as providing periodic cash payments, providing a lien, or granting other adequate
27 relief. Other relief must "result in the realization by such entity of the indubitable equivalent
28 of such entity's interest in such property," and may not be speculative, such as administrative
expenses. 11 U.S.C. § 361; see, *In re Richards Pontiac, Inc.*, 6 B.R. at 777.

1 In the context of a lease, adequate protection does not exist unless the debtor offers
2 periodic payments, a lien to secure the creditor's interest, or other testimony assuring the
3 creditor the equivalent of the creditor's interest in the property. *In re Haw. Pac. Package Store,*
4 *Inc.*, 4 B.R. 502, 505 (Bankr. D. Haw. 1980).

5 Assuming for the sake of argument that debtor has the right to possess the Property, the
6 Court must grant relief from the automatic stay if debtor is unable or unwilling to provide
7 adequate protection for Mr. Azad's interest in the property. Without adequate protection, Mr.
8 Azad will suffer continuing harm in the amount of the fair market rental rate of the Property
9 each month. Mr. Azad is informed and believes, based on internet resources and comparable
10 neighboring properties, that fair market value for the Property is approximately \$6,000 per
11 month. [Azad Decl., ¶ 5.]

12 Debtor has made no assurances of adequate protection. Debtor has proposed two plans
13 in this bankruptcy. Neither plan has indicated that debtor will assume the lease and make
14 adequate protection payments or reject the lease and surrender the Property.

15 Debtor's bankruptcy schedules demonstrate that she is not capable of making adequate
16 protection payments sufficient and necessary to protect Mr. Azad's interest in the Property.
17 Debtor has been informed that the fair market value of rent for the property is \$6,000. [Azad
18 Decl., ¶ 5]. Debtor's Schedule I discloses that her total monthly income is \$1,315 from Social
19 Security. Debtor's Schedule J shows that her monthly expenses are \$1,254. On the basis of her
20 disclosures, there is no possibility that debtor could pay the fair market rental value of the
21 Property.

22 Mr. Azad believes that debtor is actually converting as much as \$6,000-\$7,000 per
23 month. Debtor has not claimed this amount as income. In any event, Mr. Azad would be
24 hesitant to accept adequate protection payments from an unlawful source. If debtor cannot
25 make the payments from her declared, legal sources, it is proper to grant relief from the
26 automatic stay to allow Mr. Azad to pursue his state court remedies.

27 Mr. Azad requests that his interest in the Property be adequately protected during the
28 pendency of debtor's bankruptcy by the payment of fair market rental value. If no adequate

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1 violative conduct; (10) whether, after learning of the bankruptcy, creditors proceeded to take steps
2 in continued violation of the stay, or whether they moved expeditiously to gain relief; (11)
3 whether annulment of the stay will cause irreparable injury to the debtor; and (12) whether stay
4 relief will promote judicial economy or other efficiencies. *Fjeldsted*, 293 B.R. at 25; *Williams*,
5 323 B.R. at 700.

6 The foregoing items, however, are merely a framework for analysis and, in any given case,
7 one factor may so outweigh the others as to be dispositive. *Fjeldsted*, 293 B.R. at 25; *Williams*,
8 323 B.R. at 700-701. An additional factor to be considered in determining whether to grant
9 retroactive relief, is whether the court would have granted relief from the automatic stay if the
10 creditor had sought relief prior to acting. *National Envtl. Waste Corp.*, 129 F.3d at 1056; *Malaya*
11 *v. Kissinger (In re Kissinger)*, 72 F.3d 107, 109 (9th Cir. 1995). Also, debtor's use of the
12 mechanism of the automatic stay in bankruptcy to simply block a foreclosure is grounds for
13 retroactive annulment of the stay. *Burcena*, 2007 U.S. Dist LEXIS 734998 *29.

14 Applying the factors relevant to the question of whether relief from the automatic stay
15 should be granted retroactively, and balancing the equities in this case, compels the Court to grant
16 Mr. Azad's motion for retroactive relief from the automatic stay.

17 There are currently two bankruptcy petitions pending, one filed after the other, each aimed
18 at prohibiting an action to regain possession of the Property. The second was filed less than a
19 month after the Court granted relief from the automatic stay requested by Ms. Watson. While
20 there have not been an objectively large number of bankruptcy filings, the fact that they were filed
21 within months of each other and only one month after relief from stay was granted shows an
22 intention to abuse the process. The number and circumstances of the filings indicate an intention
23 to delay and hinder creditors. In addition, retroactive in rem relief would preclude the possibility
24 that additional bankruptcies will be filed by those affiliated with debtor.

25 As soon as Mr. Azad received notice that debtor was claiming to have a protected interest
26 in the Property, he stopped pursuing the Unlawful Detainer and sought counsel to bring this
27 motion.
28

1 Debtor has thus far flaunted the bankruptcy process. Her initial filings were skeletal and it
2 was impossible to determine that debtor was claiming any interest in the Property. Debtor's
3 disregard for the bankruptcy rules was the direct cause of the current need for retroactive relief.

4 At this time, there would be little difficulty or cost to restore the status quo. No action has
5 been taken in the Unlawful Detainer except filing a complaint. If retroactive relief is granted, the
6 Unlawful Detainer could proceed and Mr. Azad can regain possession of his property. This result
7 is no prejudice to the debtor because she had no interest in the property to begin with.

8 Mr. Azad respectfully requests that relief from the automatic stay be granted retroactive to
9 February 27, 2015.

10 **IV. CONCLUSION**

11 Mr. Azad respectfully requests a declaration that the automatic stay does not apply to the
12 unlawful detainer action proceeding in the Superior Court of California, County of San Mateo,
13 Case No. CLJ211042 or, in the alternative, that the court annul the stay to allow Mr. Azad to
14 pursue his state law remedies, as discussed above.

15
16 Dated: June 15, 2015

TERRA LAW LLP

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19 By: /s/ James A. McDaniel
James A. McDaniel
20 Attorneys for Creditor Mahmood Azad
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